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DEI Task Force Update

November 23, 2026

Gibson Dunn's Workplace DEI Task Force aims to help our clients navigate the evolving legal and policy landscape following recent Executive Branch actions and the Supreme Court's decision in *SFFA v. Harvard*. Prior issues of our DEI Task Force Update can be found in our DEI Resource Center.

Key Developments

On November 18, 2026, the Senate Committee on Health, Education, Labor and Pensions voted 12-10 along party lines to advance the nomination of Catherine Eschbach to serve as General Counsel of the U.S. Equal Employment Opportunity Commission ("EEOC") to the full Senate. The general counsel directs the agency's enforcement litigation program and recommends which cases the Commission should bring. Eschbach, a former Morgan Lewis & Bockius attorney, was nominated by President Trump in September 2026 to lead the EEOC's litigation program. Prior to her nomination, she had been serving as acting general counsel of the EEOC since September 2025. Before that, she led the Department of Labor's Office of Federal Contract Compliance Programs for approximately six months. At her November 10, 2026

confirmation hearing, Eschbach pledged support for the Administration's focus areas, including its opposition to workplace DEI programs and its prioritization of combating discrimination against American workers and religious employees.

On November 10, 2026, Attorney General Todd Blanche announced that President Trump had appointed Craig Trainor as Acting Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice ("DOJ"). Blanche did not say whether Trainor would be nominated to serve in the role permanently. Trainor, who has served since October 2025 as the Senate-confirmed Assistant Secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development ("HUD"), replaces Jesus Osete, who took over the Division immediately after Harmeet Dhillon's departure in the wake of the midterm elections. (Osete, previously Dhillon's principal deputy, had been announced by President Trump as his nominee for the U.S. District Court for the Western District of Missouri in August 2026, and his nomination remains pending before the Senate.) Before HUD, Trainor served as acting Assistant Secretary for Civil Rights at the Department of Education ("DOE"). At DOE, Trainor authored February 2025 guidance dissuading colleges from pursuing DEI initiatives. And at HUD, Trainor issued guidance warning colleges that affinity housing may violate federal law.

On November 9, 2026, the White House announced its nomination of Matthew Zandi for a seat on the EEOC for a term expiring July 1, 2031. Most recently, Zandi served as chief of staff to Harmeet Dhillon, who resigned from her position as Assistant Attorney General for Civil Rights following the midterm election. If confirmed, Zandi's appointment would result in a 3-1 ratio of Republican- to Democrat-appointed members of the Commission.

On November 9, 2026, the Hispanic Scholarship Fund ("HSF") announced that it settled a lawsuit brought by the American Alliance for Equal Rights ("AAER") challenging its flagship HSF Scholars Program. AAER filed suit in December 2025 in the U.S. District Court for the District of Columbia, alleging that HSF's requirement that applicants be of Hispanic heritage violated Section 1981 of the Civil Rights Act of 1866. On September 30, 2026, Judge Loren AliKhan denied HSF's motion to dismiss, in part, finding that AAER adequately alleged that the program implicates protected contractual rights and that AAER had standing. Under the settlement, HSF will not consider an applicant's race or ethnicity beginning in January 2027 and will instead open the scholarships to all applicants who demonstrate a commitment to the success of Hispanics in the United States. The case is *American Alliance for Equal Rights v. Hispanic Scholarship Fund*, No. 1:25-cv-04207 (D.D.C. 2026).

On November 3, 2026, the DOJ and the EEOC announced a two-part settlement under which Lockheed Martin Corporation agreed to pay approximately $29.5 million to resolve allegations of race- and sex-based employment practices. Under the False Claims Act ("FCA") portion of the settlement, Lockheed will pay $22 million to resolve allegations that it falsely certified compliance with federal contract antidiscrimination requirements from 2019 to the present. The government alleged that HR personnel pressured business leaders to add minority employees to, and remove non-minority employees from, the "Compensation Adder" program, which awarded additional pay to top-performing employees. DOJ also alleged that Lockheed tied management incentive compensation to demographic goals and offered race- and sex-restricted mentoring programs. The FCA settlement also resolves a *qui tam* action by a former Lockheed Vice President, who will receive $4.4 million. (The *qui tam* case is *United States ex rel. Tim Booher v. Lockheed Martin Corporation*, No. 4:25-cv-00769-P (N.D. Tex.).) Under the EEOC portion of the settlement, Lockheed will pay approximately $7.5

million to more than 1,000 employees to resolve a 2025 Commissioner's Charge filed by EEOC Chair Andrea Lucas. The charge made allegations similar to the DOJ allegations. The agreement also requires Lockheed to maintain "a merit-based workplace" and allows the EEOC to monitor compliance. The DOJ noted that Lockheed cooperated, and that there has been no determination of liability. The settlement also reflects that Lockheed expressly denied the allegations. (Gibson Dunn represented Lockheed Martin in the matter.)

On November 2, 2026, the U.S. District Court for the District of Massachusetts granted, without prejudice, Harvard University's motion to dismiss the amended complaint in an action brought by the United States to compel the production of admissions-related documents, including applicant-level data covering race, grades, test scores, essays, and other materials. DOJ and DOE had requested the data in connection with reviews of the University's compliance with Title VI of the Civil Rights Act of 1964. The court held that the government had not adequately established that it had satisfied the pre-enforcement procedural requirements it invoked, including the determination that voluntary compliance could not be secured. It further held that the complaint did not allege that DOJ informed the University of the action it would take, such as the present litigation if Harvard failed to comply, or identify the specific failure at issue, as required by 28 C.F.R. § 42.108(d). As to DOE, the court also held that the passage of time between the agency's two previous letters did not, by itself, demonstrate compliance with 34 C.F.R. § 100.8(d). The case is *United States v. President and Fellows of Harvard College*, No. 1:26-cv-10844 (D. Mass. 2026). (Gibson Dunn represented Harvard in the matter.)

On October 29, 2026, the California Civil Rights Department ("CRD") released an analysis of pay and demographic data, which identified finance and insurance as the industries with the state's largest gender pay gap. CRD reported that women in finance earn 64 cents for every dollar men earn in the industry, and 53 cents compared to white men. CRD Director Kevin Kish called the findings "a wakeup call for every leader in our state's finance industry." The announcement contrasted California's approach with federal steps to "roll back access to national workforce data," including the EEOC's proposed rescission of EEO-1 reporting, which we covered in our June 8, 2026 and August 11, 2026 updates. In the release, CRD also highlighted its recent enforcement efforts. These include September actions against two employers for failing to file pay data reports, new legislation increasing penalties for repeated non-filers, and prior equal pay settlements with tech and gaming companies.

On October 23, 2026, the U.S. District Court for the Middle District of Florida denied, in part, Danaher Corp.'s motion to dismiss a lawsuit brought by a group of white male current and former employees, alleging that the company's DEI policies violated Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, and state law. Specifically, the plaintiffs allege that the company required diverse interview slates and sought to achieve a benchmark of "50% underrepresented candidates interviewed," a category that included women and people of color. The court held that four of the plaintiffs had adequately alleged that they were rejected in favor of less-qualified applicants because of the company's DEI policies. In so holding, the court pointed to allegations that Danaher relaxed job requirements for underrepresented candidates, shortlisted those candidates for interviews, and tied talent acquisition employees' performance evaluation and pay to achieving DEI goals. The court observed that, under the company's policies, "White men are effectively second-class candidates, even if they are more qualified." The court

dismissed one plaintiff's race discrimination claim but allowed his sex discrimination claim to proceed. The case is *Critelli, et al. v. Danaher Corp*., No. 6:25-cv-01780 (M.D. Fla. 2026).

On October 22, 2026, the U.S. Court of Appeals for the Fifth Circuit vacated a preliminary injunction that had blocked enforcement of Mississippi House Bill 1193, which bars public schools and colleges from requiring DEI programs, diversity training, or diversity statements, or from promoting DEI "concepts." Now that the injunction blocking H.B. 1193 has been struck down, the Act may be enforced while the litigation continues on remand. Writing for the majority, Judge Smith, joined by Judge Engelhardt (Judge Haynes joined only the final paragraph vacating and remanding, and concurred separately), held that the district court failed to conduct the facial-challenge analysis required by *Moody v. NetChoice*, which requires courts facing First Amendment challenges to decide whether the unconstitutional applications of the law substantially outweigh the lawful ones. The court clarified that the Act "does not regulate students." It also noted the Act's exemptions for scholarly research, creative work, accreditation requirements, and unfunded student organizations. The majority held that for curricula, textbooks, and instruction, states have broad power "free from [the First Amendment's] viewpoint-neutrality requirement." In this way, the majority disagreed with the Eleventh Circuit's decision in *Pernell v. Florida Board of Governors*, in which the Eleventh Circuit held that professors' classroom instruction was not government speech. (A petition for certiorari in *Pernell* is pending.) By contrast, the Fifth Circuit maintained that, at the university level, curricula and classroom instruction are the state's own speech, which the state may shape without regard to viewpoint neutrality. However, according to the Fifth Circuit, educators' personal, non-curricular speech must be analyzed under the *Garcetti* framework as described by the Supreme Court in *Kennedy v. Bremerton School District*, which analyzes whether certain speech is part of the employee's job duties. The court remanded to a

different district judge after finding that the original district court judge (Judge Henry Wingate of the Southern District of Mississippi) issued orders with AI-generated fabricated parties, misquotations of the statute, and a hallucinated case citation. The case is *Jackson Federation of Teachers v. Fitch*, No. 25-60496 (5th Cir. Oct. 22, 2026).

On October 7, 2026, HUD announced that it had initiated an investigation under the Fair Housing Act into Wells Fargo's mortgage lending policies, practices, and programs, to determine whether the bank violated the Act's anti-discrimination provision. In a letter to Wells Fargo, HUD Assistant Secretary for Fair Housing and Equal Opportunity Craig Trainor (subsequently named as the DOJ's Acting Assistant Attorney General for Civil Rights, see Key Developments above) focused on the bank's 2017 commitment to lend $60 billion to increase Black homeownership and its 2022 $150 million special purpose credit program to lower mortgage rates and refinancing costs for minority homeowners. The letter states that although Wells Fargo removed DEI references from its website in 2025, the bank's obligations "rise or fall based on actual practices, not buzzwords or website aesthetics," and it cites archived versions of the bank's DEI reports. In the accompanying press release, HUD Secretary Scott Turner stated that "[e]ven if Wells Fargo did not violate the law, its practice of dividing Americans based on race is immoral, unethical and un-American."

On September 29, 2026, the EEOC sued Harvard University in the District of Massachusetts, seeking to compel the disclosure of records related to its diversity and inclusion programs. The subpoena enforcement action stems from a Commissioner's Charge, which alleges that the University's recruitment, development, and promotion efforts in pursuit of a diverse faculty intentionally discriminated against white, Asian, male, and/or heterosexual employees and applicants in violation of Title VII of the Civil Rights Act of 1964. The subpoena seeks documents relating to the establishment of the University's Office for Faculty Development and Diversity

and its Presidential Task Force on Inclusion and Belonging, as well as all related agendas and meeting minutes dating back to 2018. It also seeks job descriptions, performance plans, and performance reviews for three diversity and inclusion staff members, documents relating to hiring committee guidance, interview notes, and application materials of all applicants for any faculty position during the period, and demographic information regarding the applicants and decision-makers. On November 6, 2026, Harvard opposed enforcement, arguing that the subpoena was issued to retaliate against Harvard for exercising its First Amendment rights, seeks records beyond the charge's relevant time period, is unduly burdensome, and is too indefinite to enforce. In the alternative, Harvard moved for leave to conduct six months of limited discovery into the EEOC's purpose, including the decision to assign the investigation to the EEOC's Houston office and the apparent leak of the charge to the press. On November 9, 2026, Judge Angel Kelley granted Harvard's motion to set a briefing schedule and continued the hearing from November 17 to December 4, 2026, at which she will hear argument on both the EEOC's application and Harvard's discovery motion. The EEOC's reply on improper purpose and its opposition to the discovery motion are due November 16, and Harvard's reply is due November 23. The case is *EEOC v. Harvard University*, No. 1:26-mc-91522 (D. Mass. 2026).

On September 17, 2026, Florida Attorney General James Uthmeier announced a settlement resolving the state's December 2025 lawsuit against Starbucks, alleging that Starbucks violated the Florida Civil Rights Act through race- and sex-based goals, quotas, and preferences, including by tying executive compensation to diversity goals. Under the agreement, Starbucks committed to compliance with the Act, which the Attorney General's office says prohibits goals, quotas, and preferences in hiring, promotion, mentorship programs, supplier selection, and board composition that are based on race or sex, and prohibits tying executive compensation to DEI

metrics. Starbucks also agreed not to participate in organizations that require increasing the racial diversity of its board. In addition, Starbucks agreed to submit annual compliance certifications for four years and to pay $1 million to the Florida Department of Legal Affairs to cover the state's litigation costs. The agreement contains no admission of liability or wrongdoing by Starbucks.

On September 14, 2026, Associate Attorney General Stanley E. Woodward Jr. announced that the DOJ and Accenture reached a settlement in relation to an FCA investigation into the company. Under the settlement, Accenture agreed to pay $25 million in exchange for resolution of allegations that the company "fail[ed] to comply with anti-discrimination requirements in its federal contracts" due to practices the United States contends "discriminat[ed] against employees and applicants on the basis of their race or sex." Specifically, the government alleged that Accenture "took race or sex into account when making hiring decisions to achieve progress toward non-public workforce composition goals," including by tracking progress toward certain demographic goals, which were alleged to be "designed to, and did, drive changes in hiring practices based on race and sex." DOJ further alleged that Accenture took race or sex into account when making promotion decisions, including by "conduct[ing] [] separate discussion[s] of candidates who furthered [Accenture's] race or sex goals" to provide those candidates with "extra visibility" with Accenture leadership and "highlight[ing] in color the names of candidates who furthered the company's demographic goals . . . during the promotion review process," and "develop[ing] a separate 'pipeline' of potential promotion candidates who would advance [the company's] demographic goals." Finally, DOJ alleged that the company "offered certain training, mentoring, leadership development programs and educational opportunities where eligibility for these resources was limited by race or sex." Accenture denied the allegations.

Media Coverage and Commentary

Below is a selection of recent media coverage and commentary on these issues:



- **Bloomberg Law, "Lucas' Ascent in Trump's Orbit Points to Emulating Thomas' Path" (November 12, 2026)**: Tobi Raji of Bloomberg Law profiles EEOC Chair Andrea Lucas.
- **Bloomberg Law, "White Workers Score Limited Circuit Wins in DEI Training Suits" (October 22, 2026)**: Khorri Atkinson of Bloomberg Law writes that white plaintiffs bringing race-based harassment claims tied to workplace antibias trainings have had some success in federal appellate courts, even as they struggle to prove that the trainings themselves are discriminatory. Atkinson reports, for example, that the Ninth Circuit recently partially revived a claim from a white plaintiff alleging a racially hostile work environment stemming from race- and gender-equity trainings. The court held that a reasonable jury could find that the plaintiff faced years of generalized racially offensive statements in the workplace and may have been denied or discouraged from pursuing advancement opportunities because of his race. Atkinson adds that the Second Circuit recently held that antibias trainings could trigger liability where their concepts are pervasively used negatively in the workplace and supervisors fail to intervene. The Tenth Circuit endorsed the same theory but dismissed a case built on a single training, finding the plaintiff's claim speculative and insufficient to meet the severe-or-pervasive standard. Atkinson notes that, although the Supreme Court's unanimous 2025 decision in *Ames v. Ohio Department of Youth Services* held that majority-group plaintiffs need not meet a heightened evidentiary standard to show bias, the Supreme Court has not yet addressed the standard for hostile work environment claims in the context of antibias trainings.

- **Bloomberg Law, "Trump Goals Creep Into EEOC Bias Suits" (October 15, 2026)**: Bloomberg Law's Tobi Raji and Maia Pandey report that, in the agency's first full year under Chair Andrea Lucas, the EEOC's litigation docket has begun to reflect Trump Administration priorities, including combating religious discrimination, removing what the administration views as anti-American bias, and challenging diversity programs. According to a Bloomberg Law analysis cited by Raji and Pandey, the EEOC filed 97 merits lawsuits in fiscal year 2026, a 4% increase over the prior year, but still below the more than 100 suits the agency typically filed in prior years. Raji and Pandey report that, although Lucas has used social media to solicit charges from white men, only one of the 11 race discrimination suits the EEOC filed in 2026 was brought on behalf of a white worker, and only two of its 21 sex discrimination suits were brought on behalf of male workers. According to Raji and Pandey, three of the five national origin discrimination suits the EEOC filed in 2026 alleged anti-American bias, and the agency brought 15 religious discrimination suits, up from 11 the prior year.
- **Bloomberg Law, "Republican EEOC Chair Lucas Eyes Union Discrimination Cases" (October 13, 2026)**: Bloomberg Law's Tobi Raji and George Weykamp report that EEOC Chair Andrea Lucas has signaled that the agency may direct more of its antidiscrimination enforcement efforts toward labor unions. According to Raji and Weykamp, in a recent post on X, Lucas told an apprentice from the International Brotherhood of Electrical Workers—who had posted that an instructor told him and his classmates that they were the "wrong minority group" for available jobs—that he may have a claim under federal civil rights law, as the EEOC has jurisdiction over unions and apprenticeship programs. Raji and Weykamp note that, although Title VII bars labor organizations from discriminating, EEOC investigations of charges against unions are rare. In a statement, Lucas said that discrimination is wrong whether "caused by an employer, a staffing agency or recruiter, an apprenticeship program, or a union," and that EEOC enforcement is "neither singling out nor ignoring any category of covered entity."
- **Politico, "Colleges seek answers amid Trump push to cancel tax exemptions over diversity programs" (October 7, 2026)**: Brian Faler of Politico reports that the Trump Administration has proposed Internal Revenue Service ("IRS") regulations that would revoke the tax-exempt status of private schools, including colleges and universities, that maintain any "policy or practice" that discriminates based on race or ethnicity. Faler reports that the proposed rules, issued September 3, 2026, and slated to take effect in June 2027, would extend beyond admissions to educational policies, scholarships, loans, athletic programs,

and other school-administered or school-supported programs. According to Faler, the regulations identify race-based scholarships as a practice that must end, a change that the Trump Administration estimates could affect 750,000 students, but the regulations largely do not specify what other activities would be prohibited and contain no exception for minor violations. (Gibson Dunn submitted comments on the proposed rule.)

- **Law360, "4 Takeaways As EEOC Wraps Up 2026 Fiscal Year" (October 6, 2026)**: Vin Gurrieri of Law360 reports that the EEOC filed 97 merits lawsuits in its 2026 fiscal year, which ended September 30, compared with 94 in fiscal year 2025. This is down from an average of approximately 165 per year during the 2010s and approximately 106 per year since 2020. Gurrieri reports that about 40% of the EEOC's fiscal year 2026 suits included disability discrimination allegations under the Americans with Disabilities Act, while sex discrimination claims made up about one-quarter of the docket. According to Gurrieri, the EEOC's Pregnant Workers Fairness Act filings rose from seven to 12, and its religious discrimination filings rose from about 10 to at least 15, which practitioners attributed in part to EEOC Chair Andrea Lucas's stated enforcement priorities. Gurrieri notes that the EEOC's Chicago and Philadelphia district offices accounted for about 25% of filings, while the New York, Los Angeles, and San Francisco offices were relatively inactive. Gurrieri also reports that some practitioners had anticipated a larger increase after the EEOC regained a quorum in October 2025, and that several charges may not yet be ripe for litigation.
- **Bloomberg Law, "Big Law Diversity Probe Documents Must Stay Secret, DOJ Argues" (October 6, 2026)**: Bloomberg Law's Tatyana Monnay reports that DOJ argued in an October 5 filing that records related to the EEOC's 2025 inquiries into law firms' DEI practices should be withheld from public release. Monnay reports that the filing was made in *Public Citizen v. U.S. Equal Employment Opportunity Commission* (D.D.C.), a Freedom of Information Act suit that the nonprofit group Public Citizen filed in December 2025, alleging that the EEOC "has no legal basis" to withhold the documents. According to Monnay, the DOJ contends that the EEOC may not disclose information that would reveal whether a charge exists against a particular entity. Monnay provides the background that the EEOC sent letters in March 2025 to 20 law firms requesting hiring and contact information for applicants dating back to 2019, and that several firms later settled with the Trump Administration and the EEOC on undisclosed terms.

- **USA Today, "Trump slashed DEI. Now it's making a surprising bipartisan comeback" (September 17, 2026)**: Jessica Guynn of USA Today reports that, although political pressure has led many companies to retreat from DEI, a new Bentley University-Gallup Business in Society survey shows growing support for workplace diversity programs across party lines. According to Guynn, 72% of Americans "believe promoting DEI should be a priority for businesses." In addition, 75% say "businesses with diverse workforces make more innovative products," and 71% say such businesses are more profitable. Guynn reports that partisan divides remain, with 95% of Democrats and 71% of independents considering "promoting DEI a key business priority," compared with 37% of Republicans. Nonetheless, Guynn adds that the share of Republicans polled who link diverse workforces to profitability rose 11 points to 41%.
- **Bloomberg Law, "EEOC Flexes Its Subpoena Power with Corporate Diversity Probes" (September 2, 2026)**: Bloomberg Law's Tobi Raji reports that the EEOC's recent success enforcing subpoenas seeking information on DEI policies from Nike and Northwestern Mutual indicates that it may have broad power to compel the production of such information from companies moving forward. According to Raji, Nike previously argued that an EEOC subpoena seeking employment data, layoff data, and information about organizational structure and diversity programs was overbroad because it failed to specifically identify allegations of discrimination, which caused the EEOC to withdraw its subpoena. Later, however, Nike voluntarily provided the requested data. In a separate matter, Raji reports, a federal judge in the Eastern District of Wisconsin agreed in August to enforce an EEOC subpoena against Northwestern Mutual, finding that the subpoena seeking information on DEI practices, human resources information systems, and metrics used for financial rewards satisfied statutory and regulatory requirements. Raji quotes Anne Lofaso, a professor at the University of Cincinnati College of Law, who predicts that "[t]he EEOC will likely use [the] ruling to build a case alleging widespread systemic discrimination." Raji also interviews Maya Raghu of the Lawyers' Committee for Civil Rights Under Law, who opines that "subpoena enforcement actions can induce [companies] to either revise or entirely eliminate programs and practices which may actually be perfectly legal." At the same time, Raji quotes former EEOC General Counsel, David Lopez, who predicts that "judges may become impatient" if the EEOC keeps filing enforcement requests, issuing press releases, and then withdrawing requests, as it did in the Nike case.

Case Updates

Below is a list of updates in new and pending cases:

1. Contracting claims under Section 1981, the U.S. Constitution, and other statutes

- ***American Alliance for Equal Rights, et al. v. Congressional Black Caucus Foundation*, No. 1:26-cv-01123 (D.D.C. 2026)**: On April 2, 2026, AAER sued the Congressional Black Caucus Foundation ("CBCF"), alleging that CBCF's Spouses Education Scholarship violates Section 1981 by excluding non-Black applicants. On June 3, 2026, AAER amended its complaint to add Defending Education as a plaintiff. After CBCF moved to dismiss, the plaintiffs filed a Second Amended Complaint on August 31, 2026, asserting a single Section 1981 claim on behalf of three anonymous student members and alleging that the scholarship "facially bar[s] applicants who are not [B]lack" and that its requirement that applicants live or attend school in a district represented by a Congressional Black Caucus member is intended to favor Black applicants.
    - **Latest update**: On October 14, 2026, CBCF moved to dismiss the Second Amended Complaint and requested oral argument. CBCF argued that the claim is unripe and that the plaintiffs lack standing. CBCF also argued that two of the three student members never applied for the 2026 scholarship and that the plaintiffs cannot challenge a 2027 cycle that has not been announced. On the merits, CBCF argued that the plaintiffs fail to plausibly allege intentional discrimination or but-for causation, that the member-district requirement is a geographic rather than racial criterion, and that the scholarship is a charitable gift, not a contract subject to Section 1981. Finally, CBCF argued that the requested relief would chill its First Amendment-protected charitable giving and related speech. Gibson Dunn is counsel of record for CBCF.

2. Employment discrimination and related claims

- ***Diemert v. City of Seattle, et al.*, No. 2:22-cv-01640 (W.D. Wash. 2022), on appeal at No. 25-1188 (9th Cir. 2025):** On November 16, 2022, the plaintiff, a white male former employee of the City of Seattle, sued the City, alleging that its diversity initiatives—including mandatory diversity trainings involving critical race theory and encouraging participation in race-based affinity groups—amounted to racial discrimination and a hostile work environment in violation of Title VII and the Fourteenth Amendment. On February 10, 2025, the court granted the City's motion

for summary judgment. The plaintiff appealed. After hearing oral argument, the Ninth Circuit ordered supplemental briefing.

    - **Latest update:** On September 28, 2026, the Ninth Circuit affirmed in part, reversed in part, and remanded. The Ninth Circuit reversed summary judgment on the plaintiff-appellant's hostile work environment claims under Title VII and the Washington Law Against Discrimination, holding that ten race-related comments were "sufficiently numerous, frequent, and severe to create a triable issue as to the existence of a racially hostile work environment." The Ninth Circuit explained that workplace training programs designed to address racial barriers "are not inherently discriminatory," but that race-conscious training programs "may violate Title VII when they create a racially hostile work environment." The Ninth Circuit affirmed summary judgment on the constructive discharge, disparate treatment, and retaliation claims. Finally, the Ninth Circuit held that the plaintiff-appellant lacked Article III standing to pursue his equal protection claim because he was never required to join, or excluded from, any affinity group or training, or penalized for not participating, adding that "the mere fact that a program is race-conscious does not establish that it expressly classified employees on account of race."

- ***EEOC v. The New York Times Co.*, No. 1:26-cv-03704 (S.D.N.Y. 2026)**: On May 5, 2026, the EEOC sued The New York Times Company, alleging that it violated Title VII by passing over a white male senior staff editor for a deputy real estate editor position in favor of a multiracial female candidate to further alleged race- and sex-based representation goals. The charging party, Bryant Rousseau, later intervened as a plaintiff. Gibson Dunn and Proskauer Rose jointly represent The New York Times Company in this case. On July 10, 2026, the Times answered and asserted counterclaims against the EEOC and its Commissioners, alleging that the suit was brought in retaliation for the Times's reporting on the Trump Administration and violates the First Amendment, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act ("APA"). On July 31, 2026, the EEOC moved to strike the Times's affirmative defenses.

    - **Latest update**: On August 28, 2026, the EEOC and the individual counterclaim defendants moved to dismiss the Times's counterclaims, arguing that the Times lacks standing because it has not alleged an "impending future injury," that the counterclaims are only a mirror image of the EEOC's own

claims, and that the Times has not identified the "specific speech" that allegedly prompted retaliation. The motions were fully briefed as of October 2, 2026. On October 26, 2026, Magistrate Judge Robyn Tarnofsky granted the EEOC's request to stay discovery into the Times's counterclaims and challenged affirmative defenses while the motions to dismiss and strike are pending. The court reasoned that the EEOC's motions are "not unfounded in the law" and could substantially narrow discovery, and that a partial stay would not unduly prejudice the Times because briefing is complete.

3. Challenges to statutes, agency rules, executive orders, and regulatory decisions

- ***Nat'l Ass'n of Diversity Officers in Higher Educ., et al. v. Trump, et al.*, No. 8:26-cv-01532 (D. Md. 2026)**: On April 20, 2026, a group of plaintiffs sued the Trump Administration, challenging Executive Order ("EO") 14398. The plaintiffs are the National Association of Diversity Officers in Higher Education, the American Association of University Professors, the United Academics of Maryland-University of Maryland, College Park, Prince George's County, Maryland, the National Association of Minority Contractors, and the National Association of Minority Contractors, DMV Chapter. EO 14398, issued on March 26, 2026, directs executive agencies to include clauses in government contracts requiring contractors to refrain from "racially discriminatory DEI activities." The plaintiffs contend that the EO exceeds presidential authority and violates the First Amendment rights to free speech and free association. On May 22, 2026, the plaintiffs amended the complaint to also challenge the Federal Acquisition Regulatory ("FAR") Council Guidance, dated April 20, 2026, issued to implement EO 14398. They allege the guidance violates the APA, and they added a claim that EO 14398 is void for vagueness under the Due Process Clause of the Fifth Amendment. The plaintiffs seek preliminary and permanent injunctive relief preventing implementation or enforcement of the EO.
    - **Latest update**: On October 14, 2026, the court denied the plaintiffs' motion for a preliminary injunction. The court held that the plaintiffs were unlikely to succeed on their overbreadth claim. It reasoned that, although the phrase "racially discriminatory DEI activities" is "far from self-explanatory" standing alone, the EO limits the phrase to disparate treatment based on race or ethnicity. The court stated that such conduct is already unlawful and is not protected by the First Amendment. The court noted that a contractor could challenge

in court any contract termination based on a broader reading of the EO. The court also rejected the plaintiffs' vagueness challenge, holding that the EO's DEI provisions apply only to "the performance of work under this contract." It explained that any penalty for DEI-related activity outside that work could be challenged as unconstitutional retaliation.

- ***Urban Sustainability Directors Network, et al. v. United States Department of Agriculture, et al.*, No. 1:25-cv-01775 (D.D.C. 2025)**: On June 5, 2025, three nonprofit organizations sued the U.S. Department of Agriculture ("USDA") and several of its component agencies, challenging both the termination of their grant awards and an alleged policy terminating hundreds of grants related to DEI and environmental justice. The plaintiffs alleged that the terminations violated the Fifth Amendment's Due Process Clause, USDA regulations, the APA, and separation of powers principles, and exceeded executive authority by encroaching on Congress's appropriations power. On August 14, 2025, the court granted a preliminary injunction setting aside the termination of the plaintiffs' individual grants, finding that the agency's actions were likely arbitrary and capricious and, as to two grants, likely contrary to statute. The court, however, denied relief with respect to the plaintiffs' challenge to the broader alleged policy. On June 30, 2026, the court granted the plaintiffs leave to amend the complaint to add 24 grantees whose grants were terminated by the USDA. On July 14, 2026, the defendants moved to dismiss most of the Second Amended Complaint, and on August 7, 2026, the plaintiffs filed their opposition.
    - **Latest update**: On October 6, 2026, the court granted in part and denied in part the defendants' partial motion to dismiss. The court dismissed the plaintiffs' due process claims, finding that the grantees likely have no protected property interest in continued grant funding, and it dismissed the *ultra vires* claims as duplicative of the APA claims. The court allowed the APA claims challenging the alleged termination policy to proceed on behalf of all but two of the plaintiffs, and it permitted all of the plaintiffs' separation of powers claims to proceed. On October 27, 2026, the defendants filed an answer to the complaint, denying any unlawful conduct and asserting various affirmative defenses, including lack of subject-matter jurisdiction and lack of standing.

- ***Landscape Consultants of Texas Inc., et al. v. City of Houston, et al.*, No. 4:23-cv-03516 (S.D. Tex. 2023)**: In 2023, the Landscape Consultants of Texas and other plaintiffs sued the City of Houston and related entities, challenging the City's government contracting set-aside program for "minority business enterprises" as violating the Fourteenth Amendment and Section 1981 of the Civil Rights Act of 1866. On November 29, 2024, the plaintiffs and defendant Midtown Management District filed cross-motions for summary judgment. The City of Houston filed its own motion for summary judgment on November 30, 2024, contending that the plaintiffs lack standing and that the programs satisfy the requirements of the Equal Protection Clause. On July 28, 2026, the court entered judgment in favor of the plaintiffs, permanently enjoining the implementation of the City of Houston's Minority, Women, and Small Business Enterprise Program and Midtown Management District's Minority, Woman, and Disadvantaged Business Enterprise Policy on the grounds that they violate the Equal Protection Clause of the Fourteenth Amendment. The court held, as a matter of first impression, that the constitutional framework articulated in *SFFA v. Harvard* applies to race-conscious municipal public contracting programs. On August 18, 2026, the City moved to alter or amend the court's judgment, arguing that the court had applied the wrong standard of proof for a compelling interest, thereby effectively requiring "Houston to admit to committing specific past discriminatory acts in contract and thus confessing constitutional and/or statutory violations in support of its need for" the affirmative action programs. The plaintiffs opposed the motion on the grounds that the court had not committed any manifest error. On August 27, 2026, the City also moved to stay the injunction pending appeal.
    - **Latest update**: On September 22, 2026, the court denied the City's motions to alter or amend the judgment and to stay the injunction pending appeal, in a summary opinion that did not explain the court's reasoning. On October 19, 2026, the City appealed the court's denial to the Court of Appeals for the Fifth Circuit. Also on October 19, 2026, the City filed an appeal of the final judgment.
- ***State of California et al v. U.S. Department of Education et al.*, No. 1:25-cv-10548 (D. Mass. 2025)**: On March 6, 2025, eight states sued the Department of Education, the Secretary of Education, Linda McMahon, and former Acting Secretary of Education, Denise Carter, alleging that the defendants arbitrarily terminated previously awarded grants under the Teacher Quality Partnership and Supporting Effective Educator Development programs in violation of the APA. On April 16, 2026, the plaintiffs moved for summary judgment, alleging that the Department's

February 2025 directive, issued by then-Acting Secretary Denise Carter, unlawfully prohibited funding for DEI programs and effectively eliminated the two federal grant programs at issue. On June 1, 2026, the defendants filed a cross-motion for summary judgment, arguing in part that the plaintiffs' prospective claims challenging the Department's February 2025 guidance are moot because the Department has since issued new, superseding guidance that does not mandate grant terminations.

    - **Latest update**: On September 17, 2026, the court granted summary judgment to the plaintiff-states and vacated the DOE's February 2025 internal directive, "Eliminating Discrimination and Fraud in Department Grant Awards." The DOE had used that directive to terminate 104 Teacher Quality Partnership and Supporting Effective Educator Development grants. The court held that the directive was arbitrary and capricious because it did not define "DEI," did not explain what was prohibited, did not explain the DOE's departure from its prior practices, and did not consider grantees' reliance interests or less drastic alternatives. The court also held that the directive was contrary to law, in part because it conflicts with statutory provisions directing grantees to recruit "minorities" and individuals from "underrepresented populations." The ruling does not restore the terminated grants, because the court previously held that it lacked jurisdiction over the terminations under the Tucker Act.

- ***King County v. Turner*, No. 2:25-cv-00814 (W.D. Wash. 2025)**: On May 2, 2025, eight cities and counties sued HUD and the U.S. Department of Transportation ("DOT"), the Federal Transit Administration, and their agency heads, challenging the conditioning of federal grants on compliance with executive orders relating to immigration, gender identity, and DEI programs. On June 3, 2025, after the plaintiffs amended their complaints to add jurisdictions and filed a second motion for a TRO, the court granted the plaintiffs' second motion for a preliminary injunction, holding that the plaintiffs were likely to succeed on their separation of powers claim because the defendants sought to condition funding "on grounds not authorized by Congress, but rather on Executive Branch policy." The defendants appealed to the Ninth Circuit.

    - **Latest update**: On August 25, 2026, the Ninth Circuit largely affirmed the preliminary injunction but remanded with instructions to narrow the injunction as to the antidiscrimination conditions, holding that HUD and DOT may require grant recipients to comply with federal antidiscrimination laws,

including Title VI, for federally funded programs, but may not extend those conditions to unrelated programs. The court otherwise affirmed the injunction, including as to conditions requiring recipients to agree that antidiscrimination compliance is "material" for purposes of the FCA, HUD conditions barring the use of grant funds to promote "gender ideology," "elective abortions," or "illegal immigration," and HUD's requirement that recipients verify immigration status through the SAVE system, concluding that the agencies lacked statutory authority to impose those conditions.

- ***Rhode Island Coalition Against Domestic Violence, et al. v. Kennedy, et al.*, No. 1:25-cv-00342 (D.R.I. 2025)**: On July 21, 2025, 22 nonprofit organizations that receive federal grants to serve survivors of domestic violence and sexual assault, and homeless individuals, sued the U.S. Department of Health and Human Services ("HHS"), HUD, and related subagencies and officials, challenging new grant conditions that require, among other things, that recipients comply with executive orders, not use funds to promote "gender ideology" or elective abortions, and certify compliance with antidiscrimination laws and anti-DEI related requirements as a material condition of funding, which the plaintiffs allege exposes them to FCA liability. The court entered a preliminary injunction on October 10, 2025, and the parties cross-moved for summary judgment.
    - **Latest update**: On August 14, 2026, the court granted the plaintiffs' motion for summary judgment on their APA claims and vacated the conditions in their entirety. The court held the conditions arbitrary and capricious on three grounds: (1) the agencies offered no explanation beyond aligning with executive orders, which does not satisfy the APA's demand for reasoned decision making; (2) the agencies did not consider the grantees' reliance interests; and (3) the agencies failed to address important aspects of the problem, including how grantees could comply with the gender ideology condition without violating HUD's own regulations. Having resolved the case on APA grounds, the court declined to reach the plaintiffs' constitutional claims. The court denied the plaintiffs' request for a permanent injunction as unnecessary, reasoning that vacatur is ordinarily not a party-specific remedy and therefore affords complete relief, given that the conditions are unenforceable as to all HHS and HUD applicants and grantees, not only the plaintiffs.

4. Actions against educational institutions

- ***EEOC v. Trustees of the University of Pennsylvania*, No. 25-6502 (E.D. Pa. 2025)**: In December 2023, then-EEOC Commissioner Chair Andrea Lucas filed a Commissioner's Charge against the University of Pennsylvania. The charge alleges that the University subjected faculty and staff to antisemitic harassment, did not adequately respond to harassment complaints or take prompt action to stop the harassment, and allowed it to escalate. As part of its investigation, the EEOC issued a subpoena in July 2025. The subpoena sought, among other things, the names and contact information of employees who witnessed or experienced religious harassment, employees who filed complaints relating to their Jewish faith, members of Jewish clubs or campus groups, and employees in the University's Jewish studies program. On November 18, 2025, the EEOC filed an action in federal court to enforce the subpoena. On March 31, 2026, Judge Gerald J. Pappert of the Eastern District of Pennsylvania granted the EEOC's application and ordered the University to comply. On April 27, 2026, the court stayed enforcement of that order while the University appealed to the Third Circuit. The district court found that the University was unlikely to succeed on the merits, but that the public interest in an orderly resolution of a widely debated case favored a stay. On July 23, 2026, the parties filed a joint stipulation resolving the dispute, as reported in our August newsletter. The EEOC agreed not to take further steps to enforce the subpoena or the March 31 order and not to otherwise seek the subpoenaed material while its administrative investigation is pending. In exchange, the University agreed to withdraw its appeal.
    - **Latest update**: On October 6, 2026, the U.S. Court of Appeals for the Third Circuit vacated the district court's March 31, 2026 order enforcing the subpoena and remanded with instructions to dismiss. The Third Circuit's order did not provide its reasoning.
- ***Fowler v. Emory University*, No. 1:24-cv-05353 (N.D. Ga. 2024)**: On November 21, 2024, a former Emory University employee sued the university, alleging that the Vice Provost for Career and Professional Development discriminated against white employees in investigations, discipline, hiring, and promotions in violation of Title VII, the Age Discrimination in Employment Act, and Section 1981. On December 3, 2025, Emory moved for summary judgment, and on July 13, 2026, the Magistrate Judge recommended granting Emory's motion for summary judgment, reasoning that the plaintiff's age discrimination claim could not succeed because the termination decision predated the challenged summary, and that his race and sex discrimination claims failed because

(1) there was no evidence that any alleged animus was tied to a protected characteristic, (2) the purported comparator was not similarly situated, and (3) no reasonable jury could conclude that race or sex discrimination motivated his termination.

    - **Latest update**: On July 31, 2026, the plaintiff filed objections to the Magistrate Judge's Report and Recommendation, arguing that genuine issues of material fact preclude summary judgment. On September 18, 2026, the court overruled the plaintiff's objections, adopted the Report and Recommendation, granted Emory's motion for summary judgment, and directed that the case be closed. The court acknowledged that the plaintiff might be able to show that Emory fired him for a reason other than his hiring-policy violations, but it concluded that no reasonable jury could find that Emory fired him because of his age, sex, or race. On October 14, 2026, the plaintiff appealed the decision to the Eleventh Circuit.

- ***Kleinschmit v. University of Illinois Chicago*, No. 1:25-cv-01400 (N.D. Ill. 2025)**: On February 10, 2025, a former professor at the University of Illinois Chicago sued the university and several administrators, alleging that the university discriminated against white male faculty candidates and retaliated against him by firing him after he objected to its "racial hiring programs," in violation of Sections 1981 and 1983, and as later amended, Title VI. On December 17, 2025, the court dismissed the plaintiff's request for injunctive relief for lack of standing and his Section 1981 and 1983 damages claims as barred by sovereign immunity, but allowed the Title VI discrimination claim to proceed. On March 2, 2026, the plaintiff filed a Third Amended Complaint adding Section 1981 claims against five individual defendants, which the defendants moved to dismiss.

    - **Latest update**: On August 24, 2026, the court granted in part the defendants' motion to dismiss the Third Amended Complaint. The court adhered to its prior rulings on standing and sovereign immunity but allowed the plaintiff's race-discrimination and retaliation claims to proceed against the dean of UIC's College of Urban Planning and Public Affairs in her personal capacity, pointing to the Dean's alleged commitment to "diversity" in hiring and endorsement of application materials for a position that allegedly displaced the plaintiff's role and stated a preference for scholars from "a community of color." The court dismissed the remaining individual defendants for failure to allege their personal involvement and allowed the plaintiff's Title VI race-

discrimination claim against the university to proceed. On September 8, 2026, UIC's Board of Trustees answered the remaining allegations in the Third Amended Complaint.

- ***Walls v. Sanders*, No. 4:24-cv-00270 (E.D. Ark. 2024)**: On April 12, 2024, Arkansas teachers, students, and the Arkansas NAACP challenged Section 16 of the LEARNS Act, an Arkansas state statute that prohibits teaching certain concepts associated with "Critical Race Theory," alleging that it violates the First and Fourteenth Amendments by chilling speech, discriminating on the basis of viewpoint, and disproportionately targeting Black students and educators. The suit followed the state's decision to revoke approval of AP African American Studies. On December 20, 2024, the court held off ruling on the defendants' motion to dismiss as to the teachers' and students' free speech claims, the teachers' due process claims, and the as-applied equal protection claims, because the Eighth Circuit was considering an appeal of the court's earlier preliminary injunction. On August 5, 2026, the court granted the defendants' motion to dismiss the as-applied equal protection claims, holding that "[d]iscriminating [against] ideas is not the same as discriminating against people." The court declined to rule on the remaining claims and ordered additional briefing on justiciability.
    - **Latest update**: In their supplemental justiciability brief, filed on August 26, 2026, the defendants argued that the teacher-plaintiffs lack Article III standing because they have not been threatened with enforcement and because their conduct is not proscribed by Section 16. In the alternative, the defendants argued that the controversy is moot because they have clarified that Section 16 "does not prohibit mere classroom discussion of ideas, theories, historical events, or competing viewpoints." On September 2, 2026, the court stayed the defendants' motion to dismiss pending further supplemental briefing.

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